IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.818 OF 2006
IN
ARBITRATION PETITION NO.324 OF 2006

Mr. Shyam Chimandas Khilnani .. Appellant
v/s.
M/s. Radha Enterprises and another .. Respondents

Mr. Bhavesh Parmar with Ms. Manisha Virkhare for the appellant.

Mr.Snehal Shah i/by M/s. Viraj Maniyar and Associates for the respondent No.1.

Mr. Pratik Sakseria i/by Mr. Nivit Srivastava for the respondent No.2.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 21ST NOVEMBER, 2006.

P.C.

We heard Mr. Bhavesh Parmar, the counsel for the appellant and perused the impugned order.

2. That the agreement dated 2nd December, 2002 is between Pushpira Co-operative Housing Society Limited (first part), 11 members of the society i.e. (1) Mrs. Lina Ashar, (2) Mrs. Usha Sundaram, Swaminathan Sundaram (Joint Members), (3) Mrs. Chandan Krishan Kumar Razdan, (4) Mrs. Kamla Hariram

Shahani, (5) Kanaralal Gaganmal Hinduja, Mrs. Lajwanti Kanayalal Hinduja, (6) Mrs. Roshan Sheikh, Mrs. Yasmin Sheikh, (7) Prakash Thawani, (8) Mrs. Sudha Rasendra Pandya, (9) Kanahiya Pursumal Motiani, (10) Shyam Chimandas Khilnani and (11) Mrs. Joginder Kaur (second part) and M/s. Radha Enterprises (third part), is not in dispute.

3. The said agreement has an arbitration clause for resolution of disputes and differences between the three parties to the agreement. It appears that the dispute arose between the parties to the agreement and, therefore, the present appellant and the other three members out of 11 members, filed the petition under section 9 praying for the restraint order against M/s. Radha Enterprises (developer- third part) from continuing to do the redevelopment work of the building. In the arbitration petition filed under section 9 of the Arbitration and Conciliation Act, 1996, the petitioners impleaded the party to the first part and the party to the third part but 7 members out of 11 members of the second part were not impleaded. The learned Single Judge dismissed the arbitration petition on the ground that the seven members who were necessary parties have not been impleaded in the arbitration petition. Aggrieved thereby, the present appeal has been preferred.

4. In the impugned order, the learned Single Judge has recorded that the counsel for the petitioners were asked as to whether the other members who are admittedly parties to the agreement would be necessary party to the arbitration petition or

not, to which the counsel for the petitioners did not dispute that all the persons who are parties to the agreement dated 2.12.2002 shall be necessary party to the petition. The explanation, however, was given by the advocate for the petitioners that out of those seven members, two members have already died and, therefore, they could not be impleaded. Three members have ceased to be the party to the agreement by virtue of the separate agreements entered into by these three parties with the builder and the society and that remaining two members may be permitted to be impleaded.

5. The learned Single Judge found that in so far as two members have died, their legal representatives could have been impleaded. As regards the three members for whom it is stated that they have ceased to be parties to the agreement dated 2.12.2002, the question as to whether they have ceased to be parties to the agreement could only be decided in their presence and even for deciding this question, they were the necessary parties. The learned Single Judge also observed that having obtained the ad-interim order, grant of leave to the petitioners to implead the two persons shall keep the petition pending and that would mean continuation of the ad-interim order. Consequently, the learned Single Judge dismissed the petition on the ground of non-impleadment of the necessary parties.

6. In our view, the order passed by the learned Single Judge cannot be faulted. Obviously, all the parties to the agreement were required to be impleaded in the petition under

section 9 of the Arbitration and Conciliation Act, 1996 particularly when the remaining seven persons are not said to be supporting the cause set up by the petitioners. As a matter of fact, it was not disputed before the learned Single Judge that parties to the agreement were necessary parties. The explanation given for not impleading the seven members was not found satisfactory by the learned Single Judge. We find no justifiable ground to take different view.

7. The appeal does not have any merit and it is dismissed in limine.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)